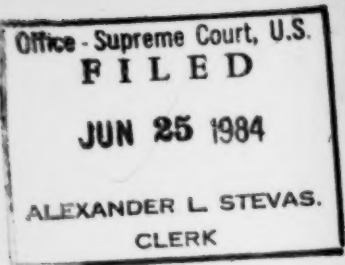


83-2118 ①



\_\_\_\_\_  
No.  
\_\_\_\_\_

**IN THE SUPREME COURT  
OF THE UNITED STATES**

\_\_\_\_\_  
October Term, 1984  
\_\_\_\_\_

Lloyd Vickroy

Petitioner,

v.

Rockwell International  
Corporation,  
International Brotherhood  
of Electrical Workers,  
Local Union 2295

Respondents.

\_\_\_\_\_  
On Petition for Writ  
of Certiorari from  
the U.S. Ninth Circuit  
Court of Appeals  
\_\_\_\_\_

**PETITION FOR WRIT OF CERTIORARI  
AND  
MOTION TO VACATE THE JUDGMENT BELOW**

\_\_\_\_\_

Lloyd Vickroy  
Pro Per  
8297 Petunia Way  
Buena Park,  
California 90620  
714-521-0840

18 p0



## **QUESTIONS PRESENTED**

Did the magistrate exceed the limitations set by the congress, in Title 28 Section 636.

Did the district court rule as unconstitutional, Federal Rule of Civil Procedure, Rule 4(d)(7).

Did the district court err in not recognizing, plaintiff's civil rights, outweighs union bargaining agreements.

## TABLE OF CONTENTS

	page
QUESTIONS PRESENTED .....	i
TABLE OF AUTHORITIES.....	iii
OPINIONS BELOW .....	1
JURISDICTION.....	1, 2
STATEMENT.....	2, 3
CONCLUSION.....	3
REASONS FOR GRANTING WRIT .....	3, 4
APPENDIX A .....	A-1-A-4
APPENDIX B .....	B-1-B-4
APPENDIX C .....	C-1

## TABLE OF AUTHORITIES

	page
Title 29 U.S.C. Section 185, 185(a) .....	2
Title 29 U.S.C. Section 159 .....	2
Title 28 U.S.C. Section 636 .....	i
Title 28 U.S.C. Section 1254(1) .....	2
Title 28 U.S.C. Section 1343(3) .....	2
U.S. Constitution, 5th Amendment.....	3
Federal Rule of Civil Procedure, Rule 4(d)(7)...	2
Appendix C .....	C-1

---

No.

---

**IN THE SUPREME COURT  
OF THE UNITED STATES**

---

October Term, 1984

---

Lloyd Vickroy

Petitioner,

v.

Rockwell International  
Corporation,  
International Brotherhood  
of Electrical Workers,  
Local Union 2295

Respondents.

---

Petition For Writ of Certiorari  
and  
Motion to Vacate the Judgment Below

---

**OPINIONS BELOW**

The opinion and judgment of the U.S. District Court (App. A, pp. A-1 to A-3) is unreported.

The opinion and judgment of the U.S. Court of Appeals, Ninth Circuit (App. B, pp. B-1 to B-3) is unreported.

**JURISDICTION**

The judgment of the United States Court of Appeals for the Ninth Circuit originally dated February 8, 1984 (rehearing en banc denied May 7, 1984) affirming the

judgment of the United States District Court for the Central district of California dated December 6, 1984.

The jurisdiction of this Court is invoked under Title 28 U.S.C. Sec. 1254(1).

## **STATEMENT**

### **1. Background.**

On June 3, 1982, Petitioner filed a civil complaint, Pro Se, in the United States District Court for the Central District of California, alleging a violation of the plaintiff's civil rights as protected under Title 29 U.S.C. Sec. 159, by employer. Employer failed to allow plaintiff to process grievance, thus causing breach of union agreement. This caused the plaintiff to seek jurisdiction of employer, for breach of contract, and union for failure to represent when contract was breached, under Title 29 U.S.C. Sec. 185, 185(a), and Title 28 U.S.C. Sec. 1343(3).

### **2. Magistrate Rulings.**

It is well defined that a magistrate may act only on non-dispositive motions. On all other motions the magistrate is limited to reports and recommendations to be reviewed by a district judge.

The record will show, in this action, the magistrate acted as a district judge, denying motions of default, ruling nonjurisdiction of defendants, issuing magistrate orders not reviewed by a district judge, on dispositive motions, prior to a final report and recommendation.

### **3. Unconstitutional Ruling.**

The district court ruled as unconstitutional F.R.C.P.

Rule 4(d)(7), under color of State of California law, due to a defect in that law requiring return of service, but no provisions for enforcing, any person served, to return service.

#### 4. Civil Rights Ignored.

The lower courts have ruled that civil and constitutional rights of a plaintiff cannot be heard until all contracted union agreements have been exhausted.

### CONCLUSION

The lower courts are attempting to rule magistrates (unlike bankruptcy court judges) have full rights to act directly on dispositive matters, in any court hearing.

The lower courts have declared State of California law on service of summons and complaint as unconstitutional in federal courts (use of federal marshalls in the U.S. District Court for the Central District of California is no longer permitted). Therefore any error in service rests directly with the district court. *S. Stern & Co. v. U.S.*, 1963, 331 F.2d 310, 51 C.C.P.A. 15, certiorari denied 84 S.Ct. 1169, 377 U.S. 909, 12 L.Ed.2d 179 (App C).

The lower courts in ruling that the plaintiff did not exhaust N.L.R.B. procedures, are in direct conflict with this Courts rulings in *Barrentine et al. v. Arkansas Best et al.*, 101 S.Ct. 1437 (1981), and *Clayton v. International Union, etc.*, 101 S.Ct. 2088 (App. C).

### REASONS FOR GRANTING THE WRIT

It is felt that a judicial review is in order on limitations of

magistrates, handling of constitutional rulings by magistrates, declaring state law unconstitutional by lower courts, and failure to permit civil rights violations to be resolved in a district court, and more detailed guide lines are needed where the pro se plaintiff, and all others in a like situation, in the State of California, will not be denied their 5th Amendment rights of due process, if this petition is elected to be heard.

It is therefore submitted that this petition for a writ of certiorari, a motion to vacate the judgement below, should be granted.

Lloyd Vickroy  
Pro Per  
8297 Petunia Way  
Buena Park,  
California 90620  
714-521-0840

## APPENDIX A

UNITED STATES DISTRICT COURT CENTRAL  
DISTRICT OF CALIFORNIA

No. CV 82-2748-CHH(T)

Lloyd Vickroy, Plaintiff,

v.

Rockwell International  
Corporation, et al., Defendant.

Filed 4 November 1982

Venetta S. Tassopoulos, U.S. Magistrate  
Report and Recommendation of Magistrate

This Report and Recommendation is filed pursuant to the provisions of 28 U.S.C. Section 636 (b)(1)(B) and General Order No. 194 of the United States District Court for the Central District of California.

On June 3, 1982, plaintiff filed a civil complaint.

The complaint contained a number of attachments and in its entirety failed to set forth in an understandable fashion the basis of jurisdiction and the factual basis for the alleged legal causes of action.

Two defendants were named: Rockwell International Corporation (hereinafter "Rockwell") and International Brotherhood of Electrical Workers, Local Union 2295 (hereinafter "International Brotherhood").

A motion to Dismiss filed by defendant International Brotherhood was granted on the ground that the Court lacks jurisdiction over the subject matter of the action, that no claim was stated for deprivation of civil rights, and that the complaint failed to allege facts to state any claim upon which relief can be granted.

Prior to the hearing on International Brotherhood's Motion to Dismiss, plaintiff filed a "Motion for Amended Complaint." Defendant International Brotherhood filed opposition thereto.

Plaintiff also filed a Motion for Default alleging Rockwell's failure to file a response. Rockwell filed its opposition to the Motion for Default correctly noting that Rockwell had not been properly served.

On August 18, 1982, a hearing was held on the pending motions.

Defendant's Motion to Dismiss the complaint was granted. Plaintiff was permitted to file the tendered first amended complaint. The Court found the complaint to be deficient, and ordered that it be dismissed.

The Court granted leave to plaintiff to file a second amended complaint and advised plaintiff that further amendment would not be permitted.

A Second Amended Complaint was filed on September 7, 1982.

Plaintiff again filed a Motion for Default against Rockwell.

The Motion for Default was denied *sua sponte* since Plaintiff again failed to properly serve Rockwell.

Defendant International Brotherhood again filed a Motion to Dismiss.

It is clear that plaintiff failed to amend the deficient complaint to state facts sufficient to state any claim upon which relief can be granted. (See defendant International Brotherhood's Memorandum of Points and Authorities, p.3.)

Moreover, plaintiff's attempt to allege violation of the National Labor Relations Act fails because there are no facts showing that plaintiff has exhausted the remedies

## **APPENDIX B**

### **UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT**

**No. 82-6119**

**Lloyd Vickroy, Plaintiff-Appellant**

**v.**

**Rockwell International  
Corporation, International  
Brotherhood of Electrical  
Workers, Local Union 2295.**

**Defendants-Appellees.**

**Filed February 8, 1984**

**Trask, Choy, and Skopil, Circuit Judges**

**Memorandum\***

The appellant, Lloyd Vickroy, appeals pro se from the district court's dismissal of his second amended complaint. Vickroy filed a complaint against his employer, Rockwell International Corporation ("Rockwell") and his union, International Brotherhood of Electrical Workers, Local 2295 ("IBEW"). Vickroy apparently intended to challenge Rockwell's alleged failure to make a cost-of-living adjustment and the Union's alleged failure to provide representation or conduct a grievance proceeding. The district court found that Vickroy had not properly served Rockwell, that the court lacked jurisdiction over the National Labor Relations Act claim, and that Vickroy's complaint failed to state a claim. After allowing Vickroy two opportunities to amend, the court dismissed the complaint as to both defendants. We affirm.

## Issues

1. Did the district court have personal jurisdiction over Rockwell?
2. Did Vickroy waive his right to appeal by filing an untimely objection to the magistrate's report?
3. Did Vickroy properly state a claim for relief?

## Discussion

### Personal Jurisdiction

Vickroy contends that the district court had personal jurisdiction over Rockwell because: (1) Rockwell was properly served; and (2) Rockwell's objection to the motion for default constituted a general appearance.

Vickroy did not perfect service on Rockwell. Pursuant to Fed.R.Civ.P. 4(c)(2)(C)(i), Vickroy attempted to use the service by mail provision authorized by California Civil Procedure Code Section 415.30. Under the express terms of section 415.30(c), service is not completed until a written acknowledgement of receipt of the summons has been returned to the sender. Here, no written acknowledgement exists. Vickroy's attempted service is deficient under Fed.R.Civ.P. 4(c)(2)(C)(ii).

The Federal Rules of Civil Procedure have abolished the distinction between special and general appearances. *See* Fed.R.Civ.P. 12(b); *Wright v. Yackley*, 459 F.2d 287, 291 (9th Cir. 1972). Rockwell based its objection to Vickroy's motion for default solely on his failure to serve process. By filing this objection, Rockwell did not submit to the jurisdiction of the court. *See Hays v. United Fireworks Mfg. Co.*, 420 F.2d 836, 844 n.10 (9th Cir. 1969).

## Failure to object to Magistrate's Report

The Ninth Circuit has recently held that a litigant's failure to object to a magistrate's recommendation will not bar an appeal from the district court's decision. *Britt v. Simi Valley Unified School District*, 708 F.2d 452 (9th Cir. 1983).

## Claims Against The IBEW

The district court found that Vickroy's complaint did not provide a clear statement of facts showing that he was entitled to relief and that the court lacked jurisdiction over the alleged NLRA claims. The court allowed an opportunity to file a second amended complaint even though the first two complaints were improperly pleaded. Vickroy did not give any indication that he would cure the defects.

When the district court dismisses a complaint for failure to comply with the pleading rules, this court will uphold the dismissal unless the district court has abused its discretion. *Wood v. Santa Barbara Chamber of Commerce*, 699 F.2d 484, 485 (9th Cir. 1983); *Schmidt v. Herrmann*, 614 F.2d 1221, 1223-24 (9th Cir. 1980). The fact that Vickroy is pro se mitigates in his favor. Nonetheless, a defendant is entitled to know the claims that he must defend. Vickroy's claims against the IBEW are not stated clearly.

The judgment of the district court is **AFFIRMED**.

\*Per Ninth Circuit Rule 21, this disposition is not intended for publication and shall not be cited as precedent.

**Filed May 7, 1984**

**Trask, Choy, and Skopil, Circuit Judges**

**Order**

The panel has voted to deny the petition for rehearing and to reject the suggestion for rehearing en banc.

The full court has been advised of an en banc suggestion, and no judge of the court has requested a vote on it.

The petition for rehearing is denied, and the suggestion for rehearing en banc is rejected.

## APPENDIX C

*S. Stern & Co. v. U.S.*, 1963, 331 F.2d 310, 51 C.C.P.A. 15, certiorari denied 84 S.Ct. 1169, 377 U.S. 909, 12 L.Ed. 2d 179

"A court may promulgate rules and interpret them as adjuncts fo dispensation of justice and orderly and expedient administration of its functions, with limitation that substantial rights of litigants be not unduly circumscribed."

*Barrentine et al. v. Arkansas Best et al.*, 101 S.Ct. 1437(1981)

"Courts should defer to an arbitration decision based on a collective bargaining agreement, but it is a different matter when an employee claims rights guaranteed by law."

*Clayton v. International Union, etc.*, 101 S.Ct. 2008.

"An employee seeking a remedy for alledged breach of collective-bargining agreement must attempt to exhaust any exclusive grievance and arbitration procedures established by that agreement before he may maintain a suit against his union or employer under Labor-Management Relations Act."



83-2118

No. [REDACTED]

Office - Supreme Court  
FILED

JUL 25 1984

ALEXANDER L. STEVENS  
CLERK

# In the Supreme Court

OF THE

## United States

OCTOBER TERM, 1983

LLOYD VICKROY,  
*Petitioner,*

VS.

ROCKWELL INTERNATIONAL CORPORATION,  
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS,  
LOCAL UNION 2295,  
*Respondents.*

### OPPOSITION TO GRANTING WRIT OF CERTIORARI

DAVIS, FROMMER & JESINGER

ELIZABETH R. LISHNER

1308 W. 8th Street, 4th Floor

P.O. Box 17948

Los Angeles, California 90017-4484

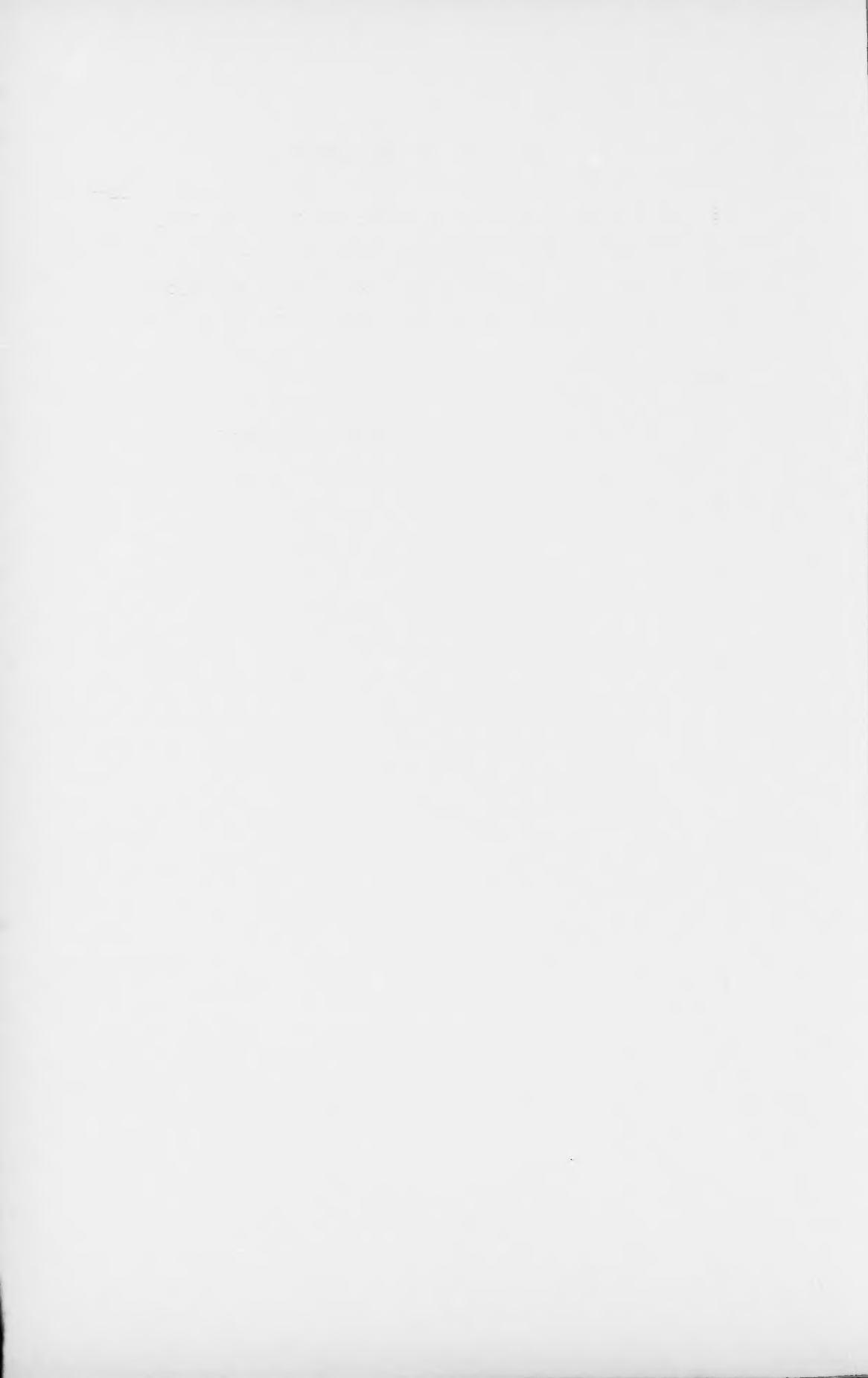
Telephone: (213) 385-3071

*Attorneys for Respondent*

*International Brotherhood*

*of Electrical Workers*

*Local Union 2295*



## TABLE OF CONTENTS

	<u>Page</u>
1. The Magistrate did not exceed her authority under 28 U.S.C. section 636 .....	1
2. There was no error by the lower courts in evaluating Petitioner's claims for alleged violation of civil rights .....	2
Conclusion .....	4

## TABLE OF AUTHORITIES CITED

### Cases

Barrentine v. Arkansas-Best Freight System, Inc., 405 U.S. 728 (1981) .....	3
Clayton v. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, 451 U.S. 679 (1981) .....	3
San Diego Building Trades Council v. Garmon, 359 U.S. 236 (1959) .....	3

### Statutes

28 U.S.C.:	
Section 636 .....	1, 2, 4
Section 636(b)(1)(B) .....	1
29 U.S.C., Section 185 .....	3

### Rule

Federal Rules of Civil Procedure, Rule 12(b)(6) .....	4
---	---



No. 83-210

# In the Supreme Court

OF THE

United States

---

OCTOBER TERM, 1983

---

LLOYD VICKROY,  
*Petitioner,*

VS.

ROCKWELL INTERNATIONAL CORPORATION,  
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS,  
LOCAL UNION 2295,  
*Respondents.*

---

## OPPOSITION TO GRANTING WRIT OF CERTIORARI

The Respondent (hereinafter "Union"), opposes the granting of a petition for writ of certiorari sought by the Petitioner, for the following reasons:

1. **The Magistrate did not exceed her authority under 28 U.S.C. section 636**

The proceedings below were entirely in conformity with the provisions of 28 U.S.C. section 636. Petitioner's Appendix A to his petition shows that the Magistrate heard various motions and issued a Report and Recommendation to District Judge Cynthia Hall pursuant to 28 U.S.C. section 636(b)(1)(B). That report details with specificity the chronology of events with respect to the filing of various complaints and amended complaints, the motions for default and for dismissal and the Magistrate's efforts at try-

ing to get the Petitioner to properly amend his complaint or seek legal counsel to assist him. Contrary to the Petitioner's contention, the Magistrate did not issue a final ruling; rather, the Magistrate made only a recommendation as to how the District Court should dispose of the matter. Thereafter, Judge Hall, after reviewing all of the records, files and the Report and Recommendation of the Magistrate and the objections thereto, issued an order dismissing the amended complaint. This procedure tracks those outlined in 28 U.S.C. section 636.

Thus, the Magistrate did not engage in any conduct or exercise any authority beyond that set forth in the statute and Petitioner's contention to the contrary is meritless.

**2. There was no error by the lower courts in evaluating Petitioner's claims for alleged violation of civil rights**

The Petitioner is contending that the lower courts refused to let him proceed with various civil rights claims until his contractual obligations were exhausted. This is clearly inaccurate. The decision of the Ninth Circuit is very brief and does not specifically reach Petitioner's arguments with respect to the civil rights allegations of his complaints. That decision states only that the pleadings are deficient and that the District Judge properly evaluated Petitioner's claims and gave him sufficient opportunities to cure the defects.

The decision of the District Court was to adopt the Magistrate's report, only after a careful review of the entire file. As to that portion of the Motion to Dismiss dealing with the Court's lack of jurisdiction over certain allegations of the Complaint, it is clear that the Court had no

jurisdiction over claims dealing with conduct arguably protected by the National Labor Relations Act. *San Diego Building Trades Council v. Garmon*, 359 U.S. 236 (1959).

As to Petitioner's civil rights claims, there was no conclusion by the District Court that Petitioner had to exhaust any National Labor Relations Board procedures prior to bringing this lawsuit. Rather, the District Court determined that Petitioner had failed to allege sufficient facts to state a claim upon which relief could be granted for deprivation of civil rights.

Petitioner's assertions that the decisions of the lower courts were in conflict with this Court's decisions in *Barrentine v. Arkansas-Best Freight System, Inc.*, 450 U.S. 728 (1981) and *Clayton v. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America*, 451 U.S. 679 (1981) are without merit. *Barrentine, supra*, deals with whether a suit under the Fair Labor Standards Act is barred by a prior arbitration decision on the same facts and *Clayton, supra*, concerns the requirement of exhausting internal union appeals prior to the commencement of a lawsuit under 29 U.S.C. section 185. Neither of these decisions is relevant to this action. There was no allegation in any of Petitioner's complaints that a prior arbitration decision had occurred and thus, *Barrentine* is inapplicable. As to *Clayton*, the issue of exhaustion of internal union remedies also was not presented to the lower courts. The District Court ruled that it had no jurisdiction over certain claims, not, as Petitioner suggests, that he be required to exhaust some internal union remedy before bringing the lawsuit.

### CONCLUSION

The decisions of the lower courts were in conformity with provisions of 28 U.S.C. section 636, and Rule 12(b)(6) of the Federal Rules of Civil Procedure. The Courts did not exceed their authority in any way nor did they commit error. Petitioner has failed to present any novel issues which should be considered by this Court.

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

DAVIS, FROMMER & JESINGER

By ELIZABETH R. LISHNER

*Attorneys for Respondent*

*International Brotherhood*

*of Electrical Workers*

*Local 2295*

No. 83-2118

IN THE

**Supreme Court of the United States**

October Term 1984

LLOYD VICKROY,

*Petitioner,*

*vs.*

ROCKWELL INTERNATIONAL CORPORATION, INTERNATIONAL  
BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION  
2295,

*Respondents.*

On Petition for Writ of Certiorari from the  
United States Court of Appeals Ninth Circuit.

**BRIEF OF RESPONDENT ROCKWELL  
INTERNATIONAL CORPORATION IN OPPOSITION  
TO PETITION FOR WRIT OF CERTIORARI.**

GIBSON, DUNN & CRUTCHER,  
STEPHEN E. TALLENT,  
333 South Grand Avenue,  
Los Angeles, Calif. 90071,  
(213) 229-7000,

*Counsel Appearing  
Specially for Respondent,  
Rockwell International  
Corporation.*

### **Question Presented.**

#### **Rockwell International Corporation\***

Did the district court abuse its discretion in denying petitioner's motion for entry of default against respondent Rockwell International Corporation on the ground that Rockwell had not been served and thus the district court had no jurisdiction over Rockwell?

---

\*This list contains all direct and indirect active subsidiaries of Rockwell (other than wholly owned subsidiaries and active companies of which Rockwell directly or indirectly owns between 20 percent and 50 percent. A.C.S. Engineering Limited, United Kingdom; Arpel S.A., France; Autonetica, S.A., Mexico; Braseixos S.A., Brazil; Brasprendas S.A., Brazil; Collins Radio Company of Japan Limited, Japan; Compagnie Industrielle de Mecanismes S.A., France; Componentes Automotrices Rockwell-Standard y Compania Limitada, Chile; Dina Rockwell Nacional, S.A., Mexico; Draper de Mexico S.A. de C.V., Mexico; Ikegai-Goss Co. Ltd., Japan; Industrias Teluo S.A., Spain; Metalurgica Carabobo, C.A., Venezuela; Moligal Productora de Assentos de Automovel, Limitada, Portugal; Phi-Magnetronics Limited, United Kingdom; Rockitt, Ltd., U.S.A.; Rockwell Cerdans, S.A., Spain; Rockwell Standard of Australia Limited, Australia; Rockwell-Standard de Venezuela, C.A., Venezuela; Rockwell Valves S.A., France; Rockwell Walther Australia Pty. Limited, Australia; Rubery Owen-Rockwell (Europa) B.V., Netherlands; Rubery Owen-Rockwell Limited, United Kingdom; S.A.S.E.B. AG Eschen, Liechtenstein; Serrature Auto Ferroviarie Edili S.p.A., Italy; Serrature Auto Meridionali Stampi Attrezzature, S.p.A., Italy; SETEC, S.p.A., Italy; Tamet Compania Anonima, Venezuela; Telehoist Humblet, N.V., Belgium; Telehoist Storer Limited, United Kingdom; USHA Telehoist Limited, India.

## TABLE OF CONTENTS

	Page
I.	
Statement of the Case .....	1
A. Introduction .....	1
B. Facts and Procedural History .....	2
II.	
Argument .....	4
A. Petitioner Did Not Perfect Service on Rockwell .....	4
B. Rockwell Did Not Submit to the Court's Juris- diction by Opposing Petitioner's Motion for Default .....	5
III.	
Conclusion .....	6
Appendix A .....	1
Appendix B .....	3
Appendix C .....	4

# TABLE OF AUTHORITIES

Cases	Page
Aldabe v. Aldabe, 616 F.2d 1089 (9th Cir. 1980) . . . . .	5
Hays v. United Fireworks Mfg. Co., 420 F.2d 836 (9th Cir. 1969) . . . . .	5
Tandy Corp. v. Superior Court, 117 Cal. App. 3d 911, 173 Cal. Rptr. 81 (1981) . . . . .	4
Wright v. Yackley, 459 F.2d 287 (9th Cir. 1972) . . . . .	5

## Rules

Federal Rule of Civil Procedure 4(c)(2)(C)(i)(ii) . . . . .	2, 4
Federal Rule of Civil Procedure 4(d)(7) . . . . .	2, 4
Federal Rule of Civil Procedure 12(b) . . . . .	5
California Code of Civil Procedure §415.30 . . . . .	2, 4, 5

## Treatises

2 J. Moore, W. Taggart & J. Wicker, Moore's Federal Practice ¶ 4.09 at 4-111 & 4-112 (2d ed. 1983) . . . . .	5
---	---

## OPINIONS

Minute Order of United States District Court dated August 18, 1982 . . . . .	App. A
Minute Order of United States District Court dated October 12, 1982 . . . . .	App. B
Report and Recommendation of the Magistrate United States District Court . . . . .	Pet.'s App. A
Order of the United States District Court Adopting Magistrate's Report and Recom- mendation . . . . .	Pet.'s App. A
Opinion and Judgment of the United States Court of Appeals for the Ninth Circuit . . . . .	Pet.'s App. B

	Page
Order of the United States Court of Appeals for the Ninth Circuit .....	Pet.'s App. B

### Statutory Provisions

Federal Rule of Civil Procedure 4(c)(2)(C)(i)(ii)	2, 4
Federal Rule of Civil Procedure 4(d)(7) .....	2, 4
Federal Rule of Civil Procedure 12(d) .....	5
California Code of Civil Procedure §415.30 ...	2, 4, 5

No. 83-2118  
IN THE  
**Supreme Court of the United States**

---

October Term 1984

---

LLOYD VICKROY,

*Petitioner,*

*vs.*

ROCKWELL INTERNATIONAL CORPORATION, INTERNATIONAL  
BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION  
2295,

*Respondents.*

---

**BRIEF OF RESPONDENT ROCKWELL  
INTERNATIONAL CORPORATION IN OPPOSITION  
TO PETITION FOR WRIT OF CERTIORARI.**

---

**I.**

**STATEMENT OF THE CASE.**

**A. Introduction.**

The federal rules no longer require a special appearance to challenge sufficiency of process; however, respondent Rockwell International Corporation ("Rockwell") submits this brief without in any way acknowledging that it has been served or that the Court has acquired jurisdiction over it. This brief is not directed to the merits but solely to the issue of whether the court of appeals correctly affirmed the district court's denial of petitioner's motion of default against respondent on the ground that it had no jurisdiction over Rockwell.

### **B. Facts and Procedural History.**

In order to fully and fairly apprise the Court of the events and proceedings in question, Rockwell here sets forth the background of this case. On or about June 7, 1982 and September 29, 1982, petitioner attempted to serve Rockwell by mail pursuant to Federal Rule of Civil Procedure 4(d)(7) which allowed service of process in accordance with the relevant state law.<sup>1</sup> Service was not perfected on either occasion. Petitioner has never received any executed acknowledgment and receipt of the summons and complaint. Thus, under California Code of Procedure Section 415.30, service was never completed on Rockwell. Rockwell did not answer or otherwise respond to any of the complaints filed by petitioner since personal jurisdiction had not been obtained over it.

Petitioner twice moved the district court to grant default against Rockwell. Each time, Rockwell specially appeared in opposition to the motions. On August 18, 1982, the magistrate denied petitioner's motion on the ground that Rockwell had not been properly served (App. A). Again, by order dated October 12, 1982, the magistrate denied petitioner's motion for default, terming petitioner's motion "frivolous" (App. B). By order dated December 1, 1982, Judge Hall of the district court concurred with the magistrate's recommendation (Pet.'s App. A-1), ordering that petitioner's second amended complaint be dismissed with prejudice (Pet.'s App. A-3).

Petitioner appealed from the district court's dismissal of his action. The issue on appeal relating to Rockwell was whether the district court had personal jurisdiction over Rockwell. By memorandum dated February 8,

---

<sup>1</sup>Federal Rule of Civil Procedure 4(d)(7) has been repealed. Rule 4(c)(2)(c)(i), which became effective on February 26, 1983, sets forth a similar provision for service of process in accordance with state law (App. C).

1984, Judges Trask, Choy and Skopil of the Ninth Circuit unanimously affirmed the district court's dismissal, holding that "Vickroy did not perfect service on Rockwell" and that "Rockwell did not submit to the jurisdiction of the court" by filing its opposition to the petitioner's motion for default (Pet.'s App. B-1). By order dated May 7, 1984, Judges Trask, Choy and Skopil denied petitioner's petition for rehearing and rejected the suggestion for rehearing en banc (Pet.'s App. B-4).

## II.

### ARGUMENT.

The district court and the court of appeals fully considered and correctly decided that petitioner's claim that default should have been granted was without merit. Petitioner now raises no special or important reasons that would justify the Court's reconsideration of the issues presented below.

#### **A. Petitioner Did Not Perfect Service on Rockwell.**

Federal Rule of Civil Procedure 4(d)(7) allowed service of process in accordance with the law of the state where the action is brought. Code of Civil Procedure Section 415.30, the applicable California statute, states that when service of the summons and complaint is attempted by mail, service, is "deemed complete on the date written acknowledgment of receipt of summons is executed, if such acknowledgement thereafter is returned to the sender." Cal. Code Civ. Proc. §415.30 (Deerings 1972). *See also Tandy Corp. v. Superior Court*, 117 Cal. App. 3d 911, 173 Cal. Rptr. 81 (1981) (holding service was not perfected since acknowledgment and receipt were not returned to plaintiff, even though the defendant signed a postal service return receipt). The penalty for failure to return the acknowledgment and receipt is not default judgment, rather failure may subject defendant to "liability for the payment of any expenses incurred in serving a summons" in another manner. Cal. Code Civ. Proc. §415.30 (Deerings 1972).

Therefore, petitioner never perfected service upon Rockwell since he did not receive an executed acknowledgment of receipt.<sup>2</sup> Neither the district court nor the

---

<sup>2</sup>Federal Rule of Civil Procedure 4(c)(2)(C)(ii), which became effective on February 26, 1983, states that the sender of the summons and complaint must receive an acknowledgment of service within 20 days after the date of mailing, or else must serve the

court of appeals stated that the federal rule or California statute were unconstitutional as petitioner claims, but rather they held that petitioner had not complied with the applicable provisions.

**B. Rockwell Did Not Submit to the Court's Jurisdiction by Opposing Petitioner's Motion for Default.**

The district court did not abuse its discretion in denying petitioner's motion for default. *See Aldabe v. Aldabe*, 616 F.2d 1089 (9th Cir. 1980) (indicating an abuse of discretion standard.) The time for responding to a complaint is calculated from the date of service. California Code of Civil Procedure Section 415.30 states that service is not complete until the sender receives an executed acknowledgment of receipt. Since petitioner never received a written acknowledgment of receipt, the time in which to respond never began to run, and no default could be taken against Rockwell. Under Federal Rule of Civil Procedure 12, Rockwell had no obligation to answer or otherwise respond since it was not served. Fed. R. Civ. P. 12. *See also* 2 J. Moore, W. Taggart & J. Wicker, *Moore's Federal Practice* ¶ 4.09, 4-110 — 4-112.

Rockwell's opposition to petitioner's motion for default was based upon petitioner's failure to serve process. This opposition did not constitute submission to the court's jurisdiction. *See Hays v. United Fireworks Mfg. Co.*, 420 F.2d 836, 843-44 (9th Cir. 1969) ("special" appearance no longer necessary to challenge sufficiency of process without submitting to court's jurisdiction); *see also Wright v. Yackley*, 459 F.2d 287, 291 (9th Cir. 1972).

---

summons and complaint in accordance with other provisions for service of process (*i.e.*, personal service by an authorized person). Even if this provision had been in effect when petitioner attempted to serve Rockwell, service still would not have been effective.

III.

CONCLUSION.

Petitioner failed to serve Rockwell according to express statutory provisions; therefore, the district court did not abuse its discretion in denying petitioner's motion for default on this ground. Petitioner has not provided any reasons which would justify the Court's reconsideration of the well-settled law on this issue. Thus, the petition for a writ of certiorari should be denied.

Dated: July 24, 1984

Respectfully submitted,  
GIBSON, DUNN & CRUTCHER,  
STEPHEN E. TALLENT,

*Attorneys Appearing Specially for  
Respondent Rockwell International  
Corporation.*

**APPENDIX A.**

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
CIVIL MINUTES — GENERAL**

Case No. CV82-2748-CHH(T)      Date: August 18, 1982

Title: LLOYD VICKROY VS. ROCKWELL INTERNATIONAL CORPORATION ET AL.

**DOCKET ENTRY**

**PRESENT:**

HON: VENETTA S.  
TASSOPOULOS

Sue Rosenfeld  
Deputy Clerk

MAGISTRATE

Gloria Himes/Tape 695A&B  
Court Reporter

ATTORNEYS PRESENT  
FOR PLAINTIFFS:  
Lloyd Vickroy, Pro Per

ATTORNEYS PRESENT FOR  
DEFENDANTS:  
Kenneth D. Hoffman  
Elizabeth R. Lishner

PROCEEDINGS: hearing on Defendant's Motion to  
Dismiss

Court makes determination that Rockwell International Corporation has not been properly served. Therefore, Plaintiff's Motion for Default is ordered Denied. Plaintiff's Motion to Quash Opposition is also denied.

Clerk is ordered to denominate "Civil Complaint, Amended Memorandum of Points and Authorities", lodged on August 3, 1982, as Plaintiff's First Amended Complaint and to be filed on this date.

Defendant's Motion to Dismiss is Granted as to the Complaint and First Amended Complaint. Plaintiff is granted leave to file a Second Amended Complaint within thirty (30) days.

Court orders Plaintiff to clearly identify his document as Second Amended Complaint and advises Plaintiff that this is the last amended complaint to be filed in this case.

**APPENDIX B.**

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
CIVIL MINUTES — GENERAL

Case No. CV82-2748-CHH(T) Date: October 12, 1982

Title: LLOYD VICKROY VS. ROCKWELL INTER-  
NATIONAL CORPORATION ET AL.

DOCKET ENTRY

PRESENT:

HON: VENETTA S.  
TASSOPOULOS

MAGISTRATE

Sue Rosenfeld  
Deputy Clerk

None Present  
Court Reporter

ATTORNEYS PRESENT  
FOR PLAINTIFFS:  
None Appearing

ATTORNEYS PRESENT FOR  
DEFENDANTS:  
None Appearing

PROCEEDINGS: (IN CHAMBERS)

The hearing set for October 27, 1982 at 10:00 A.M.  
as to Plaintiff's Motion for Default filed September  
30, 1982 is ordered off calendar.

Based on Defendant Rockwell's opposition, and for  
good legal cause, Plaintiff's Motion for Default is  
ordered denied.

Plaintiff has been advised of the defects of the serv-  
ice. Any further frivolous motions in this regard will  
result in imposition of sanctions against Plaintiff.

cc: Lloyd Vickroy  
Kenneth D. Hoffman  
Elizabeth R. Lishner

## APPENDIX C.

### **Federal Rule of Civil Procedure 4(d)(7) (repealed)**

(d) **Summons: Personal Service.** The summons and complaint shall be served together. The plaintiff shall furnish the person making service with such copies as are necessary. Service shall be made as follows:

(7) Upon a defendant of any class referred to in paragraph (1) or (3) of this subdivision of this rule, it is also sufficient if the summons and complaint are served in the manner prescribed by any statute of the United States or in the manner prescribed by the law of the state in which the district court is held for the service of summons or other like process upon any such defendant in an action brought in the courts of general jurisdiction of that state.

### **Federal Rule of Civil Procedure 4(c)(2)(C)(i)(ii)**

(C) A summons and complaint may be served upon a defendant of any class referred to in paragraph (1) or (3) of subdivision (d) of this rule —

(i) pursuant to the law of the State in which the district court is held for the service of summons or other like process upon such defendant in an action brought in the courts of general jurisdiction of that State, or

(ii) by mailing a copy of the summons and of the complaint (by first-class mail, postage prepaid) to the person to be served, together with two copies of a notice and acknowledgment conforming substantially to form 18-A and a return envelope, postage prepaid, addressed to the sender. If no acknowledgment of service under this subdivision of this rule is received by the sender within 20 days after the date of mailing, service of such summons and complaint shall be made under subparagraph (A) or (B) of

this paragraph in the manner prescribed by subdivision (d)(1) or (d)(3).

**Federal Rule of Civil Procedure 12(b)**

(b) How Presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join a party under Rule 19. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

**California Code of Civil Procedure Section 415.30**

§415.30 [Service by Mail: Articles mailed: Form of notice: When service complete: Liability for expense on failure to return acknowledgment: Approval form]

(a) A summons may be served by mail as provided in this section. A copy of the summons and of the complaint shall be mailed (by first-class mail or airmail, postage prepaid) to the person to be served, together with two copies of the notice and acknowledgment provided for in subdivision (b) and a return envelope, postage prepaid, addressed to the sender.

(b) The notice specified in subdivision (a) shall be in substantially the following form:

(Title of court and cause, with action number, to be inserted by the sender prior to mailing)

### NOTICE

To: (Here state the name of the person to be served.)

This summons is served pursuant to Section 415.30 of the California Code of Civil Procedure. Failure to complete this form and return it to the sender within 20 days may subject you (or the party on whose behalf you are being served) to liability for the payment of any expenses incurred in serving a summons upon you in any other manner permitted by law. If you are served on behalf of a corporation, unincorporated association (including a partnership), or other entity, this form must be signed in the name of such entity by you or by a person authorized to receive service of process on behalf of such entity. In all other cases, this form must be signed by you personally or by a person authorized by you to acknowledge receipt of summons. Section 415.30 provides that this summons is deemed served on the date of execution of an acknowledgment of receipt of summons.

---

Signature of Sender

ACKNOWLEDGEMENT OF RECEIPT  
OF SUMMONS

This acknowledges receipt on (insert date) of a copy  
of the summons and of the complaint at (insert address).

Date: \_\_\_\_\_

(Date this acknowledgement is executed)

\_\_\_\_\_  
Signature of person acknowledging  
receipt, with title if acknowledgment  
is made on behalf of another person

(c) Service of a summons pursuant to this section is deemed complete on the date a written acknowledgment of receipt of summons is executed, if such acknowledgment thereafter is returned to the sender.

(d) If the person to whom a copy of the summons and of the complaint are mailed pursuant to this section fails to complete and return the acknowledgement form set forth in subdivision (b) within 20 days from the date of such mailing, the party to whom the summons was mailed shall be liable for reasonable expenses thereafter incurred in serving or attempting to serve the party by another method permitted by this chapter, and, except for good cause shown, the court in which the action is pending, upon motion, with or without notice, shall award the party such expenses whether or not he is otherwise entitled to recover his costs in the action.

(e) A notice or acknowledgment of receipt in form approved by the Judicial Council is deemed to comply with this section.